

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 552 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRAVINBHAI A LINGALIA

Versus

K J MEHTA T B HOSPITAL

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Appearance:

MR DM THAKKAR for Petitioner

None present for Respondent No. 1

MR DG CHAUHAN for Respondent No. 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/12/97

C.A.V. JUDGEMENT

1. The petitioner, an ex-Chief Accountant of the K.J. Mehta T.B. Hospital, Amargadh, District Bhavnagar, challenges by this special civil application the order dated 21st January, 1985 of the respondents under which his services were terminated.

2. The petitioner was appointed as Assistant Clerk

in the service of the respondents in the year 1963. In June, 1963, he was promoted as Office Clerk and thereafter as Senior Clerk from 1964. On 16-7-1974 he was promoted as Chief Accountant. On 11-4-1983 his services were terminated by the respondents and he challenged that order before the Civil Court at Bhavnagar by filing a civil suit No.308/83. Interim injunction has also been granted in favour of the petitioner. Then the respondents put appearance in the civil court and gave out that they will withdraw the order dated 11-4-1983 subject to reserving rights to initiate disciplinary proceedings against the petitioner for misconduct. On this statement, the suit was withdrawn. Then the petitioner was given the chargesheet on 13-7-1983 and after holding an inquiry, under the order impugned in this special civil application his services came to be terminated. Hence, this special civil application.

3. The respondents contested this special civil application and a detailed affidavit-in-reply has been filed.

4. A preliminary objection has been raised in the reply that this special civil application is not maintainable as the respondents are not the State or instrumentality of the State or agency of the State within the meaning of Article 12 of the Constitution. In support of this contention, the counsel for the respondent placed reliance on two decisions of this Court in the case of G.S.F.C. Ltd. vs. Association of Officers, G.S.F.C. reported in 1995 (2) GLH 179 and in the case of Gujarat Rajya Kamdar Sangh vs. State of Gujarat reported in 1995 (2) GLH 1079. On merits also, the counsel for the respondent contended that the petitioner has no case whatsoever.

5. The learned counsel for the petitioner submitted that the writ petition is maintainable before this Court as the respondents are the State within the meaning of Article 12 of the Constitution. The respondents are receiving grant-in-aid and they are performing the functions essentially performed by the State. In the rejoinder, the petitioner has come up with a case that the respondent-Hospital is run by a public trust which is financed by the public exchequer and controlled by the Government in the matter of administration. It has further been stated that a Government representative is appointed in all the three committees of respondent No.1-trust and as such there is active participation by the Government in the affairs of the Trust. Lastly, it has been contended that the Director of Medical Services,

Gujarat State and Account General's Office audited the accounts of the Trust.

6. The respondents have come up with a case that the trust is receiving 60% grant-in-aid from the Government but the Government has no pervasive control in the matter. The Hospital is run by a Trust which is a registered public Trust. Merely because the Trust is receiving 60% grant-in-aid it will not fall within the definition of State under Article 12 of the Constitution. It has next been contended that the Trust is running the Hospital by taking donations from the public.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. The heavy burden lies on the petitioner to establish to the satisfaction of this Court that the authority against which the relief has been claimed by this special civil application under Article 226 of the Constitution is a State or an instrumentality of State or an Agency of State under Article 12 of the Constitution of India. The petitioner has not produced on the record of this special civil application the trust deed or the bye-laws of the Trust for regulating its functions. Even the petitioner has not produced on the record of this special civil application, how many trustees are there, and the details of committees which have been constituted. Further detail that who are the members of the committees has also not been given. So only two things are to be considered by this Court that whether merely because the trust is receiving 60% grant-in-aid, and on all three committees there is one of the members of the Government, the Trust and the Hospital can be said to be a State or an agency of State or instrumentality of State under Article 12 of the Constitution and amenable to the writ jurisdiction of this Court.

9. The very fact that the Trust is only getting 60% grant-in-aid goes to show that it has to arrange the balance finance from other sources. The other source as per the respondents' case, which is not disputed by the petitioner, is of taking donations. So it cannot be said that the Trust is having 100% finance from the State Government. Merely because the State Government provides finance to the Trust which is running a T.B. Hospital, it is difficult to accept that this falls within the four corners of Article 12 of the Constitution. Moreover, the petitioner has utterly failed to show that the Government has any pervasive control in the administration of the Trust. Even if it is taken that on all the three

committees, there is one of the members of the Government still only on the basis of the same it is difficult to accept that the Trust is a State or the instrumentality of the State of an agency of the State under Article 12 of the Constitution. The Trust is running a Hospital and it cannot be said to be discharging the functions of public importance and closely related to the Governmental functions. The financial assistance which has been provided by the State, as observed earlier, is also not so much as to meet almost entire expenditure of the Trust. It is only a registered public trust and only on the basis of two facts as pleaded by the petitioner, it could not be regarded as an agency or instrumentality of the State so as to come within the purview of other authorities under Article 12 of the Constitution. This matter is squarely covered by the decision of this Court in the case of G.S.F.C. Ltd. vs. Association of Officers, G.S.F.C. (supra). It is hereby held that the respondent-Hospital run by a public trust is neither an agency nor instrumentality of the State so as to come within the purview of "other authorities" under Article 12 of the Constitution.

10. The preliminary objection raised by the respondents is sustained and this petition is dismissed only on the ground that it is not maintainable.

11. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

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